

REMARKS

Claims 2-8, 10-13, 16-22, 27, and 33-38 are pending. Claim 38 is amended herein to recite that the concentrated protein comprises concentrated milk protein. Support for the amendments can be found in the specification and claims as originally filed. No new matter is added. Applicant thanks the Examiner for the opportunity to discuss the amendments in a telephonic interview on January 21, 2009.

Claim Rejections Under 35 U.S.C. § 112

The Examiner rejected Claims 38, 2-8, 10-13, 16-22, and 27 under 35 U.S.C. § 112, first paragraph, finding that “the use of ‘the concentrated protein comprises milk protein’ is not specific for milk protein.” The Examiner suggested that the Applicant use language such as “concentrated milk protein.” Without acquiescing in the rejection and to speed prosecution, Applicant amends Claim 38 to recite that the concentrated protein comprises concentrated milk protein, as suggested by the Examiner.

As Claims 33-37 were previously allowed, Applicant submits that the present application is in condition for allowance.

No Disclaimers or Disavowals

Although the present communication includes alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

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CONCLUSION

In view of the foregoing amendments and remarks, Applicant respectfully submits that this application is in condition for allowance. If there is any further hindrance to allowance of the pending claims, the Examiner is invited to contact the undersigned.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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By: David K. Buckingham
David K. Buckingham
Registration No. 60,695
Attorney of Record
Customer No. 20995
(415) 954-4114

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